

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.Rev.Pet.No. 1065 of 2000()

CRA.60/1997 of SESSIONS COURT, KASARAGOD
CC.836/1995 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDURG
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REVN. PETITIONER:

KAIKKARAN KALIL CHINKAN,
S/O.THERU, AGED 50 YEARS,
KOTTAKUNNU DESAM,
KALLAR VILLAGE, HOSDURG TALUK,
KASARAGOD DISTRICT

BY ADV. SRI.V.RAJENDRAN
SRI.V.M.KRISHNAKUMAR

RESPONDENTS:

1. EXCISE INSPECTOR,
HOSDURG RANGE
2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON CRL.M.P.NO.5714/2000 IN CRL.R.P.NO.1065/2000

DISMISSED

SD/- K.R.UDAYABHANU, JUDGE

11/09/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.No.1065 of 2000-B
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Dated this the 11th day of September, 2007

O R D E R

The revision petitioner is the accused who stands convicted for the offence under Section 55(g) of the Abkari Act and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.25,000/- and in default to undergo simple imprisonment for three months.

2. The prosecution case is that on 29/06/1995 at about 11 a.m at Punchakkara Balal road at Kallar, the accused was found carrying 15 litres of wash in a 20 litres capacity aluminium vessel. The offence was detected by PW.1, the Preventive Officer and party.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 3, Exts.P1 to P3 and MO.1. The defence examined DWs.1 and 2. With respect to the detection and recovery the only evidence in support of the prosecution is that of the version of PW.1. PW.2, the independent witness did not support the prosecution and supported the version of the defence that the accused was arrested from at his house and that there was no recovery. Of DWs.1 and 2, DW.2 is the

surety to the accused who has stated that the accused was released on bail from the house of the accused itself and DW.1 is a neighbour, who has supported the defence version that he has seen the excise personnel at the house of the accused and that they arrested the accused and that they could not make any recoveries.

4. The points raised by the counsel for the revision petitioner is the fact that MO.1 and the sample were produced before the court only on 16/11/1995, i.e. after about five months of recovery. There is no explanation for the delay. The counsel also relied on the decision of this Court in **Narayani v. Excise Inspector [2002 (3) KLT 725]**, that in the absence of evidence to prove that the recovered articles were kept in proper custody till the date of producing the same before the court, the chance of tampering with the sample taken and the contraband seized cannot be ruled out.

5. The evidence of PW.1 did not bring out anything as to the fact whether contraband was kept in safe custody till the same was produced before the court. Moreover, the only evidence of the prosecution case is that of PW.1. In the circumstances I find that the accused is entitled for the benefit of doubt.

In the above circumstances, the conviction and sentence imposed by the court below is set aside. The accused is acquitted. The criminal revision petition is allowed as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.1065 of 2000-B
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O R D E R

11th September, 2007